

TITLE 46
MILITIA AND MILITARY AFFAIRS

CHAPTER 2
OFFICERS AND ENLISTED MEN

46-201. OFFICERS -- WARRANT OFFICERS -- ENLISTMENT OF PERSONNEL -- POWER OF GOVERNOR. The governor is hereby authorized to appoint officers and warrant officers in such numbers and in such grades, and to cause to be enlisted such numbers of enlisted personnel and airmen in the army and air national guard of this state, as are authorized by the secretary of defense, under the national defense act and the rules and regulations promulgated thereunder.

[(46-201) 1927, ch. 261, sec. 21, p. 510; I.C.A., sec. 45-201; am. 1957, ch. 174, sec. 15, p. 312.]

46-202. COMMISSIONED OFFICERS -- APPOINTMENT AND COMMISSION -- OATH -- TEMPORARY APPOINTMENTS. All commissioned officers shall be appointed by the governor as commander-in-chief, and be commissioned according to the grade in the department, corps, or arm of the service in which they are appointed, and shall be assigned to duty by the commander-in-chief. They shall take and subscribe to the following oath:

"I do solemnly swear (or affirm) that I will support and defend the constitution of the United States and the constitution of the state of Idaho against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I will obey orders of the president of the United States and the governor of the state of Idaho, that I make this obligation freely, without any mental reservation or purpose of evasion, and that I will well and faithfully discharge the duties of the office of in the national guard of the state of Idaho upon which I am about to enter, so help me God."

The appointment of officers in the national guard shall be temporary until such appointees shall have been federally recognized under the provisions of the national defense act. Any officer so temporarily appointed as an officer of the national guard of this state is hereby authorized to exercise all powers of his office during the time said temporary appointment shall remain in force. Such temporary appointment shall expire upon written notice from the national guard bureau that federal recognition has been denied and upon receipt of said notice the governor is authorized and is hereby directed to discharge such temporary officer from the national guard; provided, that the provisions of this section shall not apply to officers of such forces of the organized and unorganized militias which may be called into active service of the state.

[(46-202) 1927, ch. 261, sec. 22, p. 510; I.C.A., sec. 45-202; am. 1957, ch. 174, sec. 16, p. 312.]

46-203. RANK OF OFFICERS. All officers of the national guard of this state shall take precedence or relative rank, as determined by the federal laws and the rules and regulations promulgated thereunder.

[(46-203) 1927, ch. 261, sec. 23, p. 510; I.C.A., sec. 45-203; am. 1957, ch. 174, sec. 17, p. 312.]

46-204. PROMOTION, WHEN EFFECTIVE. When a commissioned officer or warrant officer of the national guard is promoted to higher grade and accepts same, the promotion shall not be effective until the officer has qualified for the higher office by examination as required under the provisions of the national defense act.

[(46-204) 1927, ch. 261, sec. 25, p. 510; I.C.A., sec. 45-204; am. 1957, ch. 174, sec. 18, p. 312.]

46-205. VACATION OF COMMISSION -- DISCHARGE. Commissions of officers of the national guard shall be vacated upon resignation duly accepted by the governor; for absence without leave for three months; upon the recommendation of an efficiency board approved by the governor as provided by national guard regulations; pursuant to the sentence of a general court-martial after the approval thereof by the governor, imposing sentence of dismissal; or when an officer has been convicted in a civil court of any crime of the grade of felony; upon withdrawal of federal recognition by the secretary of the army or the secretary of the air force; provided, that a formal discharge shall not be given to any officer of the national guard until he shall have given a satisfactory clearance for all property belonging to the state or to the United States issued for the use in the military service by the national guard for which he is accountable or responsible, or both; and if discharge from the service of the national guard of the state shall be given before such satisfactory clearance for the responsibility of said property has been given, then such discharge shall [be] and is hereby declared null and void.

[(46-205) 1927, ch. 261, sec. 27, p. 510; am. 1931, ch. 186, sec. 4, p. 310; I.C.A., sec. 45-205; am. 1939, ch. 50, sec. 3, p. 91; am. 1957, ch. 174, sec. 19, p. 312.]

46-206. RETIREMENT -- TIME OF SERVICE. Upon request, any commissioned officer, warrant officer or enlisted member of the national guard of Idaho who has a total military service in the armed forces of the United States of twenty (20) years may be placed on the retirement list. In the discretion of the adjutant general, any member may be advanced one (1) grade prior to retirement. Promotions under this section shall be honorary.

[(46-206) 1927, ch. 261, sec. 30, p. 510; I.C.A., sec. 45-206; am. 1957, ch. 174, sec. 20, p. 312; am. 1978, ch. 54, sec. 2, p. 102; am. 2007, ch. 109, sec. 1, p. 315; am. 2008, ch. 27, sec. 10, p. 51.]

46-207. RETIRING OFFICER RESPONSIBLE FOR STATE PROPERTY -- STATUS PENDING SETTLEMENT OF ACCOUNTS. A commissioned officer responsible or accountable for state funds or state property, or property or funds of the United States, intended and issued for use in the military service, issued or entrusted to him by the adjutant general or the United States property and fiscal officer, or acquired by transfer, inventory, or purchase, from any state fund or from any annual allowance of state funds or acquired in any other manner, who may tender his resignation and whose accounts are not settled, may be relieved from active duty and held as a supernumerary officer pending settlement of his accounts; and when so relieved from active duty the office in which he is so commissioned or to which he has been assigned shall be considered as vacated: provided, that a commissioned officer so held as a supernumerary officer shall be amenable to court-martial for military

offenses to the same extent and in like manner as if upon the active list of officers.

[(46-207) 1927, ch. 261, sec. 31, p. 510; I.C.A., sec. 45-207; am. 1957, ch. 174, sec. 21, p. 312.]

46-210. ENLISTMENT -- CONTRACT AND OATH. Every person enlisting in the national guard shall sign an enlistment contract, and take and subscribe to the oath of enlistment prescribed by the national defense act and regulations issued thereunder.

[(46-210) 1927, ch. 261, sec. 34, p. 510; I.C.A., sec. 45-210; am. 1957, ch. 174, sec. 24, p. 312.]

46-211. ENLISTMENT -- PERIOD AND REQUIREMENTS -- REENLISTMENT. Hereafter the period and requirements of enlistment and reenlistment in the national guard of this state shall be the same as prescribed by the national defense act and the regulations issued thereunder.

[(46-211) 1927, ch. 261, sec. 35, p. 510; I.C.A., sec. 45-211; am. 1957, ch. 174, sec. 25, p. 312.]

46-212. ENLISTED PERSONNEL -- DISCHARGE PAPERS. An enlisted person discharged from the service of the national guard shall receive a discharge therefrom in writing, in such form and with such classification as is or shall be prescribed by the national defense act and regulations issued thereunder: provided, that the provisions of this section shall not apply to the discharge of any member of the unorganized militia called into the active service of the state.

[(46-212) 1927, ch. 261, sec. 36, p. 510; I.C.A., sec. 45-212; am. 1957, ch. 174, sec. 26, p. 312.]

46-213. ENLISTED PERSONNEL -- TRANSFERS. Enlisted personnel of the national guard may be transferred upon their own application from one (1) organization to another in the same manner as prescribed in the federal regulations of the department of the army and the department of the air force. Transfers of enlisted persons and of noncommissioned officers may be made from one (1) organization to another or from one (1) arm of the service to another, when in the judgment of the adjutant general the interests of the service demand such transfers; provided, that commanders of regiments, groups, separate squadrons, or separate battalions in the active service of the state may make such transfers within their regiment, group, separate squadron, or separate battalion as they may deem advisable for the good of the service.

[(46-213) 1927, ch. 261, sec. 37, p. 510; I.C.A., sec. 45-213; am. 1957, ch. 174, sec. 27, p. 312.]

46-215. ACCOUNTING FOR PROPERTY UPON DISCHARGE. An enlisted person who has not returned or properly accounted for all the public property belonging to the state or to the United States, issued for use in the military service, and for which he is responsible, shall not receive a full and complete discharge from the national guard of this state: provided, that if a discharge

for any enlisted man shall have been given before the return of or proper accounting for said property for which he is responsible, then said discharge shall be and is hereby declared null and void.

[(46-215) 1927, ch. 261, sec. 40, p. 510; I.C.A., sec. 45-215; am. 1957, ch. 174, sec. 29, p. 312.]

46-216. LEAVE OF ABSENCE FROM REGULAR DUTIES FOR MILITARY DUTY. All officers and employees of the state of Idaho who shall be members of the national guard or who shall be reservists in the armed forces of the United States, shall be entitled each calendar year to one hundred twenty (120) hours of military leave of absence from their respective duties without loss of pay, time, or efficiency rating during which they shall be engaged in military duty ordered or authorized under the provisions of law. State employees assigned to "uncommon tours of duty" shall have the above-referenced one hundred twenty (120) hours of leave prorated proportionally to the number of hours in their regularly scheduled biweekly pay period. Administration of paid leave for "uncommon tours of duty" shall be consistent with the federal office of personnel management (OPM) definitions and pay administration guidance for similarly situated federal employees.

[(46-216) 1927, ch. 261, sec. 34, p. 510; I.C.A., sec. 45-216; am. 1957, ch. 174, sec. 30, p. 312; am. 2006, ch. 171, sec. 1, p. 530; am. 2008, ch. 126, sec. 3, p. 347; am. 2009, ch. 44, sec. 1, p. 125.]

46-224. ENTITLED TO RESTORATION OF POSITION AFTER LEAVE OF ABSENCE FOR MILITARY TRAINING. Any person who is a duly qualified member of the national guard or of the reserve components of the armed forces, who is a member of an organized unit and who, in order to receive military training with the armed forces of the United States, not to exceed fifteen (15) days in any one (1) calendar year, leaves a position other than employment of a temporary nature in the employ of any employer, and who shall give evidence defining date of departure and date of return for purposes of military training ninety (90) days prior to the date of departure and who shall further give evidence of the satisfactory completion of such training immediately thereafter, and who is still qualified to perform the duties of such position, shall be entitled to be restored to his previous or similar position with the same status, pay and seniority. Such seniority shall continue to accrue during such period of absence, and such period of absence for military training shall be construed as an absence without leave and within the discretion of the employer. Said leave may be with or without pay.

[46-224, added 1955, ch. 202, sec. 1, p. 434.]

46-225. VACATION, SICK LEAVE, BONUS, HEALTH INSURANCE AND ADVANCEMENT UNAFFECTED BY LEAVE OF ABSENCE. Such absence for military training shall not affect the employee's right to receive normal vacation, sick leave, bonus, advancement, and other advantages of his employment normally to be anticipated in his particular position. All officers and employees of the state of Idaho who shall be members of the national guard or who shall be reservists in the armed forces of the United States shall also be entitled to their existing medical benefits for the first thirty (30) days of a deployment ordered or authorized under the provisions of the national defense act, and such entitlement shall not decrease any existing accrued leave balances.

[46-225, added 1955, ch. 202, sec. 2, p. 434; am. 2006, ch. 172, sec. 1, p. 531.]

46-226. NONCOMPLIANCE OF EMPLOYER ENTITLING EMPLOYEE TO DAMAGES OR EQUITABLE RELIEF. If any employer fails to comply with any of the provisions of this act, the employee may, at his election, bring an action at law for damages for such noncompliance or apply to the district court for such equitable relief as may be just and proper under the circumstances.

[46-226, added 1955, ch. 202, sec. 3, p. 434.]